

COPY

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JEROME O'DELL

12 JUN 21 PM 2:35
CLERK OF COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

FILED

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CV12-05403DDP(MRWX)

JEROME O'DELL,

Plaintiff,

vs.

EVERGREEN PROFESSIONAL
RECOVERIES, INC.; and DOES 1 to
10, inclusive,

Defendants.

Case No.:

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

(Unlawful Debt Collection Practices)

Demand Does Not Exceed \$10,000

COMPLAINT

INTRODUCTION

1. This is an action for actual and statutory damages brought by plaintiff JEROME O'DELL, an individual consumer, against defendant EVERGREEN PROFESSIONAL RECOVERIES, INC. (herein after referred to as "EVERGREEN" or "Defendant") for violations of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §§ 1788 *et seq.* (hereinafter "RFDCPA"),

1 which prohibit debt collectors from engaging in abusive, deceptive, and unfair
2 practices.

3 **VENUE AND JURISDICTION**

4 2. Jurisdiction of this court arises under Cal. Civ. Code §§ 1788.30, and
5 28 U.S.C. § 1331 and § 1337. Venue in this District is proper in that the Defendant
6 transacts business here and the conduct complained of occurred here.
7

8 **PARTIES**

9 3. Plaintiff JEROME O'DELL is a consumer, a natural person allegedly
10 obligated to pay any debt, residing in Los Angeles County in the state of
11 California.
12

13 4. Defendant EVERGREEN is a corporation engaged in the business of
14 collecting debt in this state, and maintains its corporate office at 12100 N.E. 195th
15 Street, Suite #325, Bothell, Washington 98011. The principal purpose of
16 Defendant is the collection of debts in this state and Defendant regularly attempts
17 to collect debts alleged to be due another.
18

19 5. Defendant is engaged in the collection of debts from consumers using
20 the mail and telephone. Defendant regularly attempts to collect consumer debts
21 alleged to be due to another. Defendant is a "debt collector" as defined by the
22 FDCPA, 15 U.S.C. § 1692a(6), and the Cal. Civ. Code § 1788.2.
23
24
25

FACTS

6. Upon information and belief, within one year prior to the filing of this complaint, Defendant placed collection calls to Plaintiff, seeking and demanding payment for an alleged consumer debt owed under an account number.

7. The debt that Defendant is attempting to collect on is an alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

8. Upon information and belief, Defendant's agent "Cindy" began contacting Plaintiff and placing collection calls to Plaintiff prior to June of 2012 from telephone number 425-939-1252 to Plaintiff's work telephone number.

9. Defendant has left voicemails with Plaintiff and failed to meaningfully identify itself as a debt collector.

10. Defendant has engaged in deceptive and misleading conduct in failing to meaningfully identify itself as a debt collector.

COUNT I – FDCPA

11. Plaintiff repeats and realleges and incorporates by reference the foregoing paragraphs.

1 12. Defendant violated the FDCPA. Defendant's violations include, but
2 are not limited to the following:

3 **COUNT I – FDCPA**

4 11. Plaintiff incorporates paragraphs 1 - 10.

5 12. Defendant thereby violated the following provisions of the FDCPA:

- 6 i) 15 U.S.C. §1692d(5);
7
8 ii) 15 U.S.C. §1692d(6);
9
10 iii) 15 U.S.C. §1692e(10);
11
12 vi) 15 U.S.C. §1692e(11).

13 13. Sections 1692d(5) and d(6) state in pertinent part that:

14 **A debt collector may not engage in any conduct the natural consequence**
15 **of which is to harass, oppress, or abuse any person in connection with**
16 **the collection of a debt. Without limiting the general application of the**
17 **foregoing, the following conduct is a violation of this section:**

18 ...

19 **(5) Causing a telephone to ring or engaging any person in telephone**
20 **conversation repeatedly or continuously with intent to annoy, abuse, or**
21 **harass any person at the called number.**

22 ...

23 **(6) Except as provided in section 1692b of this title, the placement of**
24 **telephone calls without meaningful disclosure of the caller's identity**

25 14. Sections 1692 e(10) and e(11) state in pertinent part that:

A debt collector may not use any false, deceptive, or misleading
 representation or means in connection with the collection of any debt.
 Without limiting the general application of the foregoing, the following
 conduct is a violation of this section:

 ...

1 (10) The use of any false representation or deceptive means to collect or
2 attempt to collect any debt or to obtain information concerning a
3 consumer.

4 (11) The failure to disclose in the initial written communication with the
5 consumer and, in addition, if the initial communication with the
6 consumer is oral, in that initial oral communication, that the debt
7 collector is attempting to collect a debt and that any information
8 obtained will be used for that purpose, and the failure to disclose in
9 subsequent communications that the communication is from a debt
10 collector, except that this paragraph shall not apply to a formal
11 pleading made in connection with a legal action.

12 **COUNT II – RFDCPA**

13 15. Plaintiff incorporates paragraphs 1 - 14.

14 16. Defendant thereby violated the following provisions of the RFDCPA:

15 i) Cal. Civ. Code § 1788.11(b);

16 ii) Cal. Civ. Code § 1788.11(d);

17 iii) Cal. Civ. Code § 1788.11(e); and

18 iv) Cal. Civ. Code § 1788.17.

19 17. Sections 1788.11 (b), (d) and (e) state in pertinent part that:

20 **1788.11. No debt collector shall collect or attempt to collect a
21 consumer debt by means of the following practices:**

22 ...

23 (b) Placing telephone calls without disclosure of the caller's
24 identity, provided that an employee of a licensed collection agency
25 may identify himself by using his registered alias name as long as he
correctly identifies the agency he represents;

...

(d) Causing a telephone to ring repeatedly or continuously to
annoy the person called; or

...

1 (e) Communicating, by telephone or in person, with the debtor with
2 such frequency as to be unreasonable and to constitute an harassment
to the debtor under the circumstances.

3 18. Sections 1788.17 states in pertinent part as follows:

4 **1788.17. Notwithstanding any other provision of this title, every**
5 **debt collector collecting or attempting to collect a consumer debt**
6 **shall comply with the provisions of Sections 1692b to 1692j,**
7 **inclusive, of, and shall be subject to the remedies in Section 1692k**
8 **of, Title 15 of the United States Code. However, subsection (11) of**
9 **Section 1692e and Section 1692g shall not apply to any person**
10 **specified in paragraphs (A) and (B) of subsection (6) of Section**
11 **1692a of Title 15 of the United States Code or that person's**
12 **principal. The references to federal codes in this section refer to**
13 **those codes as they read January 1, 2001.**

14 **PRAYER FOR RELIEF**

15 WHEREFORE, the Court should enter judgment in favor of Plaintiff and
16 against Defendant for:

- 17 (1) Statutory and actual damages;
18 (2) Attorney's fees, litigation expenses and costs of suit;
19 (3) Such other and further relief as the Court deems proper.

20 RESPECTFULLY SUBMITTED,

21 DATED: June 20, 2012

22 PRICE LAW GROUP APC

23 By: 

24 G. Thomas Martin, III
25 Attorney for Plaintiff

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, JEROME O'DELL demands trial
by jury in this action.

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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

JEROME O'DELL

CASE NUMBER

PLAINTIFF(S)

CV12-05403

DDP(MRWx)

v.

EVERGREEN PROFESSIONAL RECOVERIES,
 INC.; and DOES 1 to 10, inclusive,

DEFENDANT(S).

SUMMONS

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, G. Thomas Martin, III (SBN 218456), whose address is 15760 Ventura Boulevard, Suite 1100; Encino, California 91436. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

JUN 21 2012

Dated: _____

Clerk, U.S. District Court

By: _____

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) JEROME O'DELL LOS ANGELES COUNTY	DEFENDANTS EVERGREEN PROFESSIONAL RECOVERIES, INC.; and DOES 1 to 10, inclusive, WASHINGTON
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) G. Thomas Martin, III (SBN 218456) PRICE LAW GROUP, APC 15760 Ventura Blvd., #1100, Encino, CA 91436; T: (818) 907-2030	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from another district (specify):
 ☐ 6 Multi-District Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No
 MONEY DEMANDED IN COMPLAINT: \$ According to Proof (<\$10,000)

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

15 USC 1692; UNLAWFUL DEBT COLLECTION PRACTICES

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Consumer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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CV12-05403

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
 If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes
 If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
LOS ANGELES COUNTY	

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	WASHINGTON

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
LOS ANGELES COUNTY	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): *J. Thomas Nelson* Date 06/20/2012

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))